

EXHIBIT 23

2012 WL 1867276

Only the Westlaw citation is currently available.

United States District Court,
M.D. Pennsylvania.

Dawn Marie BALL, Plaintiff

v.

Lt. SISLEY, et al., Defendants.

Civil No. 1:11-CV-877.

I

May 22, 2012.

Attorneys and Law Firms

Dawn Ball, Muncy, PA, pro se.

ORDER

YVETTE KANE, Chief Judge.

***1** THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On October 11, 2011, Magistrate Judge Carlson filed a Report and Recommendation in which he recommended that Plaintiff Dawn Marie Ball's complaint (Doc. No. 1) be dismissed without prejudice to Plaintiff endeavoring to correct the defects outlined in the Report and Recommendation. (Doc. No. 16.) On November 4, 2011, Plaintiff filed a motion for extension of time to file an amended complaint (Doc. No. 24), which Magistrate Judge Carlson granted in part, on November 17, 2011 (Doc. No. 26). Plaintiff filed an amended complaint on December 2, 2011. (Doc. No. 28.) On December 20, 2011, Magistrate Judge Carlson issued a second Report and Recommendation in which he recommends this Court

dismiss with prejudice Plaintiff's due process claims against Defendants Giroux, Bechdel, Hummel, Edwards, Sisley, and Savage and grant Plaintiff leave to amend her complaint to correct all other defects identified in the Report and Recommendation. (Doc. No. 31.) In response, Plaintiff argues that her claims against Defendants should not be construed as due process claims because she alleges Defendants' conduct constitutes theft of mail in violation of federal law. The criminal offenses of theft and obstruction of mail do not, however, provide for a private right of action for the violation of these penal statutes. *See, e.g., Schowengerdt v. Gen. Dynamics Corp.*, 823 F.2d 1328 (9th Cir.1987); *Contemporary Mission, Inc. v. U.S. Postal Serv.*, 648 F.2d 97 (2d Cir.1981). Thus, Magistrate Judge Carlson did not err in failing to consider whether Defendants' conduct violated these statutes. The Court, having conducted a *de novo* review of the Report and Recommendation, finds no error therein.

ACCORDINGLY, on this 22nd day of May 2012, **IT IS HEREBY ORDERED THAT** the Report and Recommendation (Doc. No. 31) is **ADOPTED**, the amended complaint (Doc. No. 27) is **DISMISSED WITH PREJUDICE** as to all due process claims against Defendants Giroux, Bechdel, Hummel, Edwards, Sisley and Savage and **DISMISSED WITHOUT PREJUDICE** to Plaintiff endeavoring to correct any remaining defects cited in the amended complaint within twenty days of the date of this order. Because the Court previously granted Plaintiff's motion to proceed *in forma pauperis*, Plaintiff's renewed motion to proceed *in forma pauperis* (Doc. No. 28) is **DENIED AS MOOT**.

All Citations

Not Reported in F.Supp.2d, 2012 WL 1867276

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